

AMENDED IN SENATE AUGUST 5, 2002  
AMENDED IN SENATE JUNE 17, 2002  
AMENDED IN SENATE JUNE 3, 2002  
AMENDED IN SENATE MAY 22, 2002  
AMENDED IN ASSEMBLY JANUARY 14, 2002  
AMENDED IN ASSEMBLY APRIL 30, 2001  
AMENDED IN ASSEMBLY APRIL 4, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

## ASSEMBLY BILL

**No. 875**

**Introduced by Assembly Member Horton**

February 22, 2001

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An act to add Chapter 3.5 (commencing with Section 19250) to Division 8 of the Business and Professions Code, *and to repeal Title 2.95 (commencing with Section 1812.600) of Part 4 of Division 3 of the Civil Code*, relating to auctioneers.

### LEGISLATIVE COUNSEL'S DIGEST

AB 875, as amended, Horton. Auctioneers and auction companies. Existing law ~~regulating~~ *regulates* auctioneers and auction companies ~~was repealed in 1993~~.

This bill would, *effective July 1, 2003, recast these provisions and would enact the—Professional Auctioneer and Auction Company Registration Act regulating auctioneers and auction companies*. The bill would authorize the charging of registration and renewal fees by county

clerks who would issue certificates of registration to qualified applicants.

~~This bill provides~~ *would provide* that a violation of the act *including, but not limited to, submitting an initial application or a renewal application for registration as an auctioneer or auction company containing a false representation and any written complaint alleging a violation of the act containing a false representation* would be a misdemeanor. Because this bill would create new crimes, it would impose a state-mandated local program.

~~Existing law provides that perjury is a crime.~~

~~This bill would require that all initial and renewal applications for registration as an auctioneer or auction company and any written complaint alleging a violation of the act be signed under penalty of perjury. Because this bill would require all initial applications, renewal applications, and complaints to be signed under penalty of perjury, the violation of which is a crime, the bill would impose a state-mandated local program. The bill would define terms applicable to these provisions, establish specified bonding requirements for auctioneers and auction companies, and require that the county clerk and the Secretary of State be notified by the auctioneer or the auction company of, among other things, name changes and changes of corporate officers. The bill would make related and conforming changes.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



*The people of the State of California do enact as follows:*

SECTION 1. Chapter 3.5 (commencing with Section 19250) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 3.5. ~~PROFESSIONAL~~ AUCTIONEER AND AUCTION  
COMPANY REGISTRATION ACT

*Article 1. General Provisions*

19250. This chapter shall be known and may be cited as the ~~Professional~~ Auctioneer and Auction Company Registration Act.

19251. (a) “Advertisement” means any of the following:

(1) Any written or printed communication for the purpose of soliciting, describing, or offering to act as an auctioneer or provide auction company services, including any brochure, pamphlet, newspaper, periodical, or publication.

(2) A telephone or other directory listing caused or permitted by an auctioneer or auction company to be published that indicates the offer to practice auctioneering or auction company services.

(3) A radio, television, or similar airwave transmission that solicits or offers the practice of auctioneering or auction company services.

(b) “Auction” means a sale transaction conducted by means of oral or written exchanges between an auctioneer and the members of his or her audience, which exchanges consist of a series of invitations for offers for the purchase of goods made by the auctioneer and offers to purchase made by members of the audience and culminate in the acceptance by the auctioneer of the highest or most favorable offer made by a member of the participating audience.

(c) “Auction company” means any person who arranges, manages, sponsors, advertises, accounts for the proceeds of, or carries out auction sales at locations, including, but not limited to, any fixed location, including an auction barn, gallery place of business, sale barn, sale yard, sale pavilion, and the contiguous surroundings of each.

1 (d) “Auctioneer” means any individual who is engaged in, or  
2 who by advertising or otherwise holds himself or herself out as  
3 being available to engage in, the calling for, the recognition of, and  
4 the acceptance of, offers for the purchase of goods at an auction.

5 (e) “Employee” means an individual who works for an  
6 employer, is listed on the employer’s payroll records, and is under  
7 the employer’s control.

8 (f) “Employer” means a person who employs an individual for  
9 wages or salary, lists the individual on the person’s payroll  
10 records, and withholds legally required deductions and  
11 contributions.

12 (g) “Goods” means any goods, wares, chattels, merchandise,  
13 or other personal property, including domestic animals and farm  
14 products.

15 (h) “Identification card” means a wallet-sized card containing  
16 the registrant’s name, address, registration number, date of  
17 expiration, and county of registration issued by the county clerk,  
18 that, in the case of a registered auctioneer, shall include a  
19 photograph of the registered auctioneer.

20 (i) “Person” means an individual, corporation, partnership,  
21 trust, including a business trust, firm, association, organization,  
22 or any other form of business enterprise.

23 (j) “Registrant” means any person registered under this  
24 chapter as an auctioneer or auction company.

## 25 Article 2. Bonding

26  
27  
28 19255. (a) (1) An application for a certificate of registration  
29 as an auctioneer or an auction company by an individual shall be  
30 accompanied by a bond of thirty thousand dollars (\$30,000)  
31 executed by a corporate surety qualified to do business in this state  
32 and conditioned upon compliance with this chapter. The total  
33 aggregate liability on the bond shall be limited to thirty thousand  
34 dollars (\$30,000). An application for secondary registration shall  
35 meet all of the requirements of this subdivision, except that in place  
36 of posting another original bond or cash deposit, the applicant  
37 shall include a certified copy of the bond or cash deposit posted in  
38 the county in which the applicant filed the primary registration.

39 (2) An application for a certificate of registration as an  
40 auctioneer or an auction company by a partnership or corporation

1 shall be accompanied by a bond of thirty thousand dollars  
2 (\$30,000) executed by a corporate surety qualified to do business  
3 in this state and conditioned upon compliance with this chapter.  
4 The total aggregate liability on the bond shall be limited to thirty  
5 thousand dollars (\$30,000). An application for a certificate of  
6 registration by a person employed by a partnership or corporation  
7 shall be accompanied by a bond of thirty thousand dollars  
8 (\$30,000) only if the partnership or corporation has not posted a  
9 bond of thirty thousand dollars (\$30,000) as required by this  
10 subdivision. An application for secondary registration shall meet  
11 all of the requirements of this subdivision, except that in place of  
12 posting another original bond or cash deposit, the applicant shall  
13 include a certified copy of the bond or cash deposit posted in the  
14 county in which the applicant filed the primary registration.

15 (3) The bond may be terminated pursuant to Section 995.440  
16 of, and Article 13 (commencing with Section 996.310) of Chapter  
17 2 of Title 14 of Part 2 of, the Code of Civil Procedure.

18 (b) The county clerk shall, upon filing of the bond, deliver the  
19 bond forthwith to the county recorder for recording. The recording  
20 fee specified in Section 27361 of the Government Code shall be  
21 paid by the registrant. The fee may be paid to the county clerk who  
22 shall transmit it to the recorder.

23 (c) The fee for filing, canceling, revoking, or withdrawing the  
24 bond is seven dollars (\$7).

25 (d) The county recorder shall record the bond and any notice  
26 of cancellation, revocation, or withdrawal of the bond, and shall  
27 thereafter mail the instrument, unless specified to the contrary, to  
28 the person named in the instrument and, if no person is named, to  
29 the party leaving it for recording. The recording fee specified in  
30 Section 27361 of the Government Code for notice of cancellation,  
31 revocation, or withdrawal of the bond shall be paid to the county  
32 clerk, who shall transmit it to the county recorder.

33 (e) In lieu of the bond required by subdivision (a), a registrant  
34 may deposit thirty thousand dollars (\$30,000) in cash with the  
35 county clerk.

36 (f) If the certificate is revoked, the bond or cash deposit shall  
37 be returned to the bonding party or depositor subject to  
38 subdivision (g).

39 (g) The county clerk may retain a cash deposit until the  
40 expiration of three years from the date the registrant has ceased to

1 do business, or three years from the expiration or revocation date  
2 of the registration, in order to ensure there are no outstanding  
3 claims against the deposit. A judge of a municipal or superior  
4 court may order the return of the deposit prior to the expiration of  
5 three years upon evidence satisfactory to the judge that there are  
6 no outstanding claims against the deposit.

7 (h) The bond required by this section shall be in favor of the  
8 State of California for the benefit of any person who is damaged  
9 as a result of the violation of this chapter or by the fraud,  
10 dishonesty, or incompetency of an individual, partnership, or  
11 corporation registered under this chapter. The bond required by  
12 this section shall also indicate the name of the county in which it  
13 will be filed.

14  
15 Article 3. Registration

16  
17 19260. No individual may act as an auctioneer and no person  
18 may operate an auction company unless that individual or person  
19 holds an unexpired valid registration issued pursuant to this  
20 chapter. However, the requirements of this chapter do not apply to  
21 any of the following:

22 (a) An auction of goods conducted by, on behalf of, or under the  
23 direction of, any public authority, political candidate or party,  
24 church, or charitable organization provided that the person  
25 actually conducting the auction does so without compensation.

26 (b) An auction of goods conducted by an individual who  
27 personally owns those goods and who did not acquire the goods for  
28 resale.

29 ~~(c) A sale of real estate or a sale in any sequence of real estate~~  
30 ~~with personal property or fixtures, or both, in a unified sale~~  
31 ~~pursuant to Section 9501 of the Commercial Code.~~

32 (c) A sale of real estate provided that the auctioneer conducting  
33 a real estate auction is registered as required by this chapter.

34 (d) An automobile auction regulated by the Department of  
35 Motor Vehicles. The exemption provided by this subdivision shall  
36 extend to employees of these auctions but not to independent  
37 contractors calling an auction.

38 (e) An auction of livestock in any place designated by the  
39 Secretary of the United States Department of Agriculture as a  
40 stockyard pursuant to Section 202 of Chapter 9 of Title 7 of the

1 United States Code. However, an individual other than the auction  
2 yard owner or manager, acting as an auctioneer at a livestock  
3 auction shall be registered as required by this chapter.

4 ~~19252. (a)~~

5 *(f) After July 1, 2003, an owner or operator of any business*  
6 *registered as a corporation or foreign corporation within this state*  
7 *whose principal business activity consists of maintaining and*  
8 *operating a Web site or collection of related Web sites that enable*  
9 *third parties to auction, or otherwise advertise, offer to sell or*  
10 *purchase, accept an offer to sell or purchase, sell, or purchase*  
11 *goods or services. This type of online Web site maintains a*  
12 *contractual relation with those who buy or sell within their*  
13 *marketplace and shall also have in place easily identifiable*  
14 *resources for the protection of those who use the site or sites for*  
15 *transactions. These resources may include a means for providing*  
16 *customer support, integrated payment options, escrow and*  
17 *valuation options, and fraud prevention procedures.*

18 19261. An auctioneer and an auction company shall be  
19 registered by the county clerk of the county in which he or she  
20 resides or has his or her principal place of business, and in which  
21 he or she maintains a branch office.

22 ~~(b) Except as provided in subdivision (c), no other agency or~~  
23 ~~political subdivision of the state shall impose on a registrant or~~  
24 ~~seller at auction any registration or license requirement or any~~  
25 ~~license or employment fee or charge on account of auction~~  
26 ~~activities.~~

27 ~~(c) This chapter does not prohibit any city, county, or city and~~  
28 ~~county, from imposing a business license fee on a licensed~~  
29 ~~auctioneer or auction company whose principal place of business~~  
30 ~~is located in that city, county, or city and county.~~

31 ~~19253.~~

32 19262. (a) The application for registration of a natural person  
33 shall be ~~signed under penalty of perjury and~~ *submitted with a*  
34 *certification that includes a statement that the representations*  
35 *made are true, correct, and contain no material omissions of fact*  
36 *to the best knowledge and belief of the person submitting the*  
37 *certification. A person submitting the certification who declares as*  
38 *true any material matter pursuant to this subdivision that he or she*  
39 *knows to be false is guilty of a misdemeanor. The application shall*  
40 *include, all of the following statements about the applicant:*



1 (1) The name, age, address, and telephone number of the  
2 applicant.

3 (2) That the applicant is of good character and has not been  
4 convicted of any felony ~~involving moral turpitude nor of any~~  
5 ~~misdemeanor prosecuted pursuant to Section 1812.604 of the~~  
6 ~~Civil Code within the previous 12 months nor been denied~~  
7 ~~registration or licensing in any other state or had this registration~~  
8 ~~or licensing as an auctioneer previously revoked in any other state.~~

9 (3) That he or she meets the following minimum standards:

10 (A) Is 18 years of age.

11 (B) Has a high school education or GED.

12 (C) (i) ~~Has completed a course of study of not less than 80~~  
13 ~~hours at a recognized school of auctioneering which course of~~  
14 ~~study includes at a minimum the requirements of California~~  
15 ~~governing the conduct of auctions, or (ii) has served an~~  
16 ~~apprenticeship of six months with a registered auctioneer in~~  
17 ~~California which includes conducting at least six auctions under~~  
18 ~~the supervision of a registered auctioneer, or (iii) has obtained a~~  
19 ~~license in another state with licensing requirements requiring an~~  
20 ~~equivalent amount of study or apprenticeship as required in~~  
21 ~~California, or (iv) prior to January 1, 2003, has been actively~~  
22 ~~engaged as an auctioneer in California conducting auctions for at~~  
23 ~~least two of the last three years.~~

24 ~~(4) or any misdemeanor violation of this chapter nor~~  
25 ~~previously had his or her registration denied, suspended, or~~  
26 ~~revoked.~~

27 (3) Provide proof that the applicant, or his or her employer,  
28 holds a valid seller's permit issued by the State Board of  
29 Equalization.

30 ~~(5)~~

31 (4) Provide proof that a surety bond in the name of the  
32 applicant, or his or her employer, has been obtained and is on file  
33 with the Secretary of State as required by Section 1812.600 of the  
34 Civil Code.

35 ~~(6)~~

36 (5) Provide two color photographs of passport size and quality.

37 ~~(7)~~

38 (6) Provide one set of fingerprints on a form approved by the  
39 Department of Justice and pay the required fee for fingerprint  
40 processing.



(b) The application for renewal of registration of a natural person shall also be submitted ~~under penalty of perjury with a certification that includes a statement that the representations made are true, correct, and contain no material omissions of fact to the best knowledge and belief of the applicant or the person submitting the certification~~ and shall include the requirements contained in paragraphs (1) to (5), ~~inclusive, of subdivision (a) and a statement describing any additional continuing education courses taken by the applicant during the period since the previous registration was issued.~~ *inclusive, of subdivision (a).*

(c) The application for registration and for the renewal of registration of an auction company, except an auction company wholly owned by a registered individual and operated as a sole proprietorship, shall contain all the same information as that of an individual applicant except that the information required by paragraphs (1), (2), ~~(6), and (7)~~ (5), *and (6)* of subdivision (a) shall be provided for each partner if the company is a partnership and for each officer if it is a corporation.

~~19254.~~

19263. An applicant shall pay a fee of two hundred seventy-five dollars (\$275) to the county clerk at the time he or she files an application for registration. An additional fee of ten dollars (\$10) shall be paid to the county clerk for each additional identification card.

~~19255.~~

19264. (a) Upon receipt of a properly completed application for registration or renewal of registration, accompanied by payment of the proper fees, the county clerk shall send the fingerprints to the Department of Justice for a state and federal criminal offender record information (CORI) check.

(b) This CORI check shall include every conviction rendered against the applicant, every arrest for an offense for which the applicant is presently awaiting trial, and whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(c) The Department of Justice shall send these results back to the county clerk.

(d) Upon receipt of the Department of Justice results showing no criminal offender record information inconsistent with the minimum application requirements set forth in Section ~~19253~~

1 19262, the county clerk shall issue a certificate of registration and  
2 an identification card or cards to each registrant as provided in  
3 Section ~~19258~~ 19267.

4 ~~19256.~~

5 19265. A certificate of registration shall be effective for a  
6 period of two years. Thereafter, a registrant shall file a new  
7 application ~~under penalty of perjury~~ for renewal of registration and  
8 pay the fee set forth in Section ~~19254~~ 19263. *The application shall*  
9 *be submitted with a certification that includes a statement that the*  
10 *representations made are true, correct, and contain no material*  
11 *omissions of fact to the best knowledge and belief of the applicant*  
12 *or the person submitting the certification. A person submitting the*  
13 *certification who declares as true any material matter pursuant to*  
14 *this subdivision that he or she knows to be false is guilty of a*  
15 *misdemeanor.*

16 ~~19257.~~

17 19266. Each registrant under this chapter shall, as a condition  
18 of registration, maintain, in force and effect, a bond or deposit as  
19 required by ~~Section 1812.600 of the Civil Code~~ *this chapter* and  
20 shall file a copy of the bond or proof of cash deposit with the  
21 county clerk at the time of application for registration and renewal  
22 of registration.

23 ~~19258.~~

24 19267. (a) The county clerk shall maintain a register of  
25 auctioneers and auction companies, assign a number to each  
26 registered auctioneer or auction company, and issue a certificate  
27 of registration and an identification card to each auction company  
28 and auctioneer. Additional cards for employees of auction  
29 companies shall be issued upon the payment of ten dollars (\$10)  
30 for each card. Upon renewal of registration, the same number shall  
31 be assigned, provided there is no lapse in the period of registration.

32 (b) The certificate of registration shall contain at the top the  
33 title, "Registered Auctioneer" or "Registered Auction  
34 Company" followed by the registrant's name, address,  
35 registration number, date of expiration, and county of registration.  
36 In the case of a registered auctioneer, it shall also contain a  
37 photograph of the registrant.

38 (c) The identification card shall be a card  $3\frac{3}{8}$  by  $2\frac{1}{4}$  inches,  
39 and shall contain at the top the title, "Registered Auctioneer" or  
40 "Registered Auction Company" followed by the registrant's

name, address, registration number, date of expiration, and county of registration. In the case of a registered auctioneer, it shall also contain a photograph of the registrant.

(d) Every registered auctioneer and registered auction company shall disclose his or her registration number and bond number in all advertising of auctions and at his or her place of business along with the information required to be disclosed and displayed by ~~Section 1812.607 of the Civil Code~~ *this chapter*.

(e) Every registered auctioneer and registered auction company shall notify the county clerk within 30 days of the following:

(1) Any change of address of record.

(2) Any change in the officers of a corporate license.

(3) Any change in the business or trade name of the auctioneer or auction company.

~~19259. (a) The county clerk shall revoke the~~

#### Article 4. Conduct of Auctions

*19270. In conducting the business of auctioneering, each auctioneer and auction company, and the company's owners, partners, officers, agents, and employees, shall do all of the following:*

*(a) Follow all lawful requests of the owner or consignor of the goods being sold at auction with regard to the sale of those goods.*

*(b) Perform his or her duties so that the highest or most favorable offer made by a member of his or her audience is accepted, except to the extent that any item or sale is offered with reserve or subject to confirmation.*

*(c) Truthfully represent the goods to be auctioned.*

*(d) Otherwise perform his or her duties in accordance with the laws of this state.*

*19271. Every auctioneer who operates his or her own auction company as a sole proprietor, and every auction company, together with its owners, partners, and officers, that employs an auctioneer, shall be responsible for all violations committed by the auctioneer or by any company employee in the conduct of auction business. An auctioneer who is employed by an auctioneer or auction company shall be responsible for all violations committed by him or her in the conduct of auction business.*

1 *It is a violation of this chapter for any auctioneer or auction*  
2 *company, or the company's owners, partners, and officers, to*  
3 *direct or knowingly permit any violation of this chapter by any*  
4 *auctioneer employed by or under contract with that auctioneer or*  
5 *auction company, or by any owner, partner, officer, agent, or*  
6 *employee of the auction company.*

7 *19272. Every auction company and auctioneer shall do all of*  
8 *the following:*

9 *(a) Disclose his or her name, trade or business name, telephone*  
10 *number, and bond number in all advertising of auctions. This*  
11 *section shall not apply to business cards, business stationery, or to*  
12 *any advertisement that does not specify an auction date.*

13 *(b) Post a sign, the dimensions of which shall be at least 18*  
14 *inches by 24 inches, at the main entrance to each auction, stating*  
15 *that the auction is being conducted in compliance with Section*  
16 *2328 of the Commercial Code, Section 535 of the Penal Code, and*  
17 *the provisions of this code.*

18 *(c) Post or distribute to the audience the terms, conditions,*  
19 *restrictions, and procedures whereby goods will be sold at the*  
20 *auction, and announce any changes to those terms, conditions,*  
21 *restrictions, and procedures prior to the beginning of the auction*  
22 *sale.*

23 *(d) Notify the Secretary of State and county clerk of each county*  
24 *where registered of any change in address of record within 30 days*  
25 *of the change.*

26 *(e) Notify the Secretary of State and county clerk of each county*  
27 *where registered of any change in the officers of a corporate*  
28 *license within 30 days of the change.*

29 *(f) Notify the Secretary of State and county clerk of each county*  
30 *where registered of any change in the business or trade name of the*  
31 *auctioneer or auction company within 30 days of the change.*

32 *(g) Keep and maintain, at the auctioneer's or auction*  
33 *company's address of record, complete and correct records and*  
34 *accounts pertaining to the auctioneer's or auction company's*  
35 *activity for a period of not less than two years. The records shall*  
36 *include the name and address of the owner or consignor and of any*  
37 *buyer of goods at any auction sale engaged in or conducted by the*  
38 *auctioneer or auction company, a description of the goods, the*  
39 *terms and conditions of the acceptance and sale of the goods, all*  
40 *written contracts with owners and consignors, and accounts of all*

1 moneys received and paid out, whether on the auctioneer's or  
2 auction company's own behalf or as agent, as a result of those  
3 activities.

4 (h) Within 30 working days after the sale transaction, provide,  
5 or cause to be provided, an account to the owner or consignor of  
6 all goods that are the subject of an auction engaged in or  
7 conducted by the auctioneer or auction company.

8 (i) Within 30 working days after a sale transaction of goods,  
9 pay or cause to be paid all moneys and proceeds due to the owner  
10 or the consignor of all goods that were the subject of an auction  
11 engaged in or conducted by the auctioneer or auction company,  
12 unless delay is compelled by legal proceedings or the inability of  
13 the auctioneer or auction company, through no fault of his or her  
14 own, to transfer title to the goods or to comply with any provision  
15 of this chapter, the Commercial Code, or the Code of Civil  
16 Procedure, or with any other applicable provision of law.

17 (j) Maintain the funds of all owners, consignors, buyers, and  
18 other clients and customers separate from his or her personal  
19 funds and accounts.

20 (k) Immediately prior to offering any item for sale, disclose to  
21 the audience the existence and amount of any liens or other  
22 encumbrances on the item, unless the item is sold as free and clear.  
23 For the purposes of this subdivision, an item is "free and clear"  
24 if all liens and encumbrances on the item are to be paid prior to  
25 the transfer of title.

26 (l) Within two working days after an auction sale, return the  
27 blank check or deposit of each buyer who purchased no goods at  
28 the sale.

29 (m) Within 30 working days of any auction sale, refund that  
30 portion of the deposit of each buyer that exceeds the cost of the  
31 goods purchased, unless delay is compelled by legal proceedings  
32 or the inability of the auctioneer or auction company, through no  
33 fault of his or her own, to transfer title to the goods or to comply  
34 with any provision of this chapter, the Commercial Code, or the  
35 Code of Civil Procedure, or with other applicable provisions of  
36 law, or unless the buyer violated the terms of a written agreement  
37 that he or she take possession of purchased goods within a  
38 specified period of time.

1 19273. In addition to other requirements and prohibitions of  
2 this chapter, it is a violation of this chapter for any person to do any  
3 of the following:

4 (a) Fail to comply with any provision of this code, or with any  
5 provision of the Vehicle Code, the Commercial Code, any  
6 regulation of the Secretary of State, the Code of Civil Procedure,  
7 the Penal Code, or any law administered by the State Board of  
8 Equalization, relating to the auctioneering business, including,  
9 but not limited to, sales and the transfer of title of goods.

10 (b) Aid or abet the activity of any other person that violates any  
11 provision of this chapter.

12 (c) Place or use any misleading or untruthful advertising or  
13 statements or make any substantial misrepresentation in  
14 conducting auctioneering business.

15 (d) Sell goods at auction before the auctioneer or auction  
16 company involved has first entered into a written contract with the  
17 owner or consignor of the goods, which contract sets forth the  
18 terms and conditions upon which the auctioneer or auction  
19 company accepts the goods for sale. The written contract shall  
20 include all of the following:

21 (1) The auctioneer's or auction company's name, trade or  
22 business name, business address, and business telephone number.

23 (2) An inventory of the item or items to be sold at auction.

24 (3) A description of the services to be provided and the agreed  
25 consideration for the services, which description shall explicitly  
26 state which party shall be responsible for advertising and other  
27 expenses.

28 (4) The approximate date or dates when the item or items will  
29 be sold at auction.

30 (5) A statement as to which party shall be responsible for  
31 insuring the item or items against loss by theft, fire, or other means.

32 (6) A disclosure that the auctioneer or auction company is  
33 registered with the county clerk and has a bond on file with the  
34 Secretary of State.

35 (e) Sell goods at auction before the auctioneer or auction  
36 company involved has first entered into a written contract with the  
37 auctioneer who is to conduct the auction.

38 (f) Fail to reduce to writing all amendments or addenda to any  
39 written contract with an owner or consignor or an auctioneer.



(g) Fail to abide by the terms of any written contract required by this section.

(h) Cause or allow any person to bid at a sale for the sole purpose of increasing the bid on any item or items being sold by the auctioneer, except as authorized by Section 2328 of the Commercial Code or by this title. A violation of this subdivision includes, but is not limited to, either of the following:

(1) Stating any increased bid greater than that offered by the last highest bidder when, in fact, no person has made such a bid.

(2) Allowing the owner, consignor, or agent thereof, of any item or items to bid on the item or items, without disclosing to the audience that the owner, consignor, or agent thereof has reserved the right to so bid.

(i) Knowingly misrepresent the nature of any item or items to be sold at auction, including, but not limited to, age, authenticity, value, condition, or origin. In addition to any other sanctions imposed by a county or court, it shall be required that the buyer of the misrepresented item be refunded the purchase price of the item or items within 24 hours of return to the auctioneer or auction company of the item by the buyer, provided that the item is returned within five days after the date of the auction sale.

(j) Misrepresent the terms, conditions, restrictions, or procedures under which goods will be sold at auction.

(k) Sell any item subject to sales tax without possessing a valid and unrevoked seller's permit from the State Board of Equalization.

#### Article 5. Suspension or Revocation of Registration

19280. (a) A certificate of registration of an auctioneer or auction company may be suspended or revoked by a county clerk based on any of the following:

~~(1) Upon receipt of a court document or record stating that the registrant has been found guilty of a misdemeanor violation of this chapter or of Section 1812.604 of the Civil Code.~~

~~(2) Upon receipt of notice from a bonding company or the Secretary of State's office that the registrant's bond is no longer in effect.~~



~~(3) That a civil judgment has been entered against the registrant in an action arising out of a violation of Title 2.95 of the Civil Code.~~

~~(b) The county clerk shall give notice of these court actions.~~

~~(e)~~

*(1) The registrant has provided information in the registration application that is materially false.*

*(2) The registrant has failed to maintain a bond as required this chapter.*

*(3) The registrant has committed any act punishable under this chapter.*

*(4) The registrant has been convicted of a felony.*

*(b) An investigation concerning the revocation of a certificate of registration of a registrant may be commenced at any time the county district attorney deems it appropriate or upon the complaint, in writing, of any person who claims to have been injured by the conduct of the registrant in violation of any law. Any person who submits a complaint shall include a certification that includes a statement that representations made are true, correct, and contain no material omissions of fact to the best knowledge and belief of the person submitting the certification. A person submitting the certification who declares as true any material matter pursuant to this subdivision that he or she knows to be false is guilty of a misdemeanor.*

*(c) If the district attorney of the county determines from the investigation that a reason may exist for the suspension or revocation of the certificate of registration, he or she shall set the matter for hearing and give notice to the registrant. That hearing shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code, and, for the purposes of those provisions, the district attorney shall be deemed to be the agency, but shall be charged as provided by Section 11527 of the Government Code.*

*(d) A registrant whose registration is suspended or revoked pursuant to paragraph (2) of subdivision (a) because the registrant's bond is no longer in effect, may reapply upon proof that the bond has been reinstated or a new bond is in place.*

~~(d)~~

*(e) A registrant whose registration is revoked pursuant to this subdivision due to a civil or criminal judgment arising out of a*

1 violation of this chapter ~~or of Title 2.95~~ may reapply for  
2 registration one year after the date the registration was revoked.

3 ~~19260. (a) A certificate of registration may be revoked or~~  
4 ~~suspended by the issuing county whenever it has been determined~~  
5 ~~that any of the following has occurred:~~

6 ~~(1) The registrant has provided information in the registration~~  
7 ~~application that is materially false.~~

8 ~~(2) The registrant has failed to maintain a bond as required by~~  
9 ~~Section 1812.600 of the Civil Code.~~

10 ~~(3) The registrant has committed any act punishable under~~  
11 ~~Section 1812.604 of the Civil Code.~~

12 ~~(4) The registrant has been convicted of a felony involving~~  
13 ~~moral turpitude.~~

14 ~~(b) An investigation concerning the revocation of certificate of~~  
15 ~~registration of a registrant may be commenced at any time the~~  
16 ~~county district attorney deems it appropriate or upon the~~  
17 ~~complaint, in writing and signed under penalty of perjury, of any~~  
18 ~~person who claims to have been injured by conduct of the~~  
19 ~~registrant in violation of law.~~

20 ~~(c) If the district attorney of the county determines from the~~  
21 ~~investigation that a reason may exist for the suspension or~~  
22 ~~revocation of the certificate of registration, he or she shall set the~~  
23 ~~matter for hearing and give notice to the registrant. That hearing~~  
24 ~~shall be conducted in accordance with Chapter 5 (commencing~~  
25 ~~with Section 11500) of Division 3 of Title 2 of the Government~~  
26 ~~Code, and, for the purposes of those provisions, the district~~  
27 ~~attorney shall be deemed to be the agency, but shall be charged as~~  
28 ~~provided by Section 11527 of the Government Code.~~

29 ~~19261.~~

30 *19281. A registrant whose certificate of registration is*  
31 *denied, suspended, or revoked shall be entitled to challenge the*  
32 *decision in a court of competent jurisdiction.*

33 ~~19262. A failure to comply with the requirements of this~~  
34 ~~chapter shall be punishable as a misdemeanor.~~

35 *19282. The superior court for the county in which any person*  
36 *has engaged or is about to engage in any act that constitutes a*  
37 *violation of this chapter may, upon a petition filed by any person,*  
38 *issue an injunction or other appropriate order restraining the*  
39 *violative conduct. Proceedings under this section shall be*  
40 *governed by Chapter 3 (commencing with Section 525) of Title 7*

1 of Part 2 of the Code of Civil Procedure, except that no  
2 undertaking shall be required.

3 19283. (a) The superior court for the county in which any  
4 person has engaged in any act that constitutes a violation of this  
5 chapter may, upon a petition filed by any person, order the person  
6 who committed the violation to make restitution to any person  
7 injured as a result of the violation.

8 (b) The court may order any person against whom an  
9 injunction or restraining order pursuant to subdivision (a), or an  
10 order requiring restitution pursuant to subdivision (b), is directed,  
11 to reimburse the petitioner for expenses incurred in the  
12 investigation related to its petition.

13 (c) The remedies set forth in this section are in addition to, and  
14 not a limitation on, the authority provided for in any other section  
15 of this code.

16 19284. Except as otherwise provided in this chapter, any  
17 person who violates any provision of this chapter is guilty of a  
18 misdemeanor, which offense is punishable by a fine not exceeding  
19 one thousand dollars (\$1,000), or by imprisonment in a county jail  
20 for not more than one year, or by both that fine and imprisonment.  
21 In addition, upon a conviction of any violation of this chapter, or  
22 of any crime related to the conduct of an auctioneer, the court may  
23 issue an injunction and prohibit the convicted person from acting  
24 as an auctioneer or an auction company in this state, in which case  
25 the court shall inform the Secretary of State and the county clerk  
26 of each county in which the auctioneer is registered of that action.

27 19285. This chapter shall become operative on July 1, 2003.

28 SEC. 2. Title 2.95 (commencing with Section 1812.600) of  
29 Part 4 of Division 3 of the Civil Code is repealed.

30 SEC. 3. No reimbursement is required by this act pursuant to  
31 Section 6 of Article XIII B of the California Constitution for  
32 certain costs that may be incurred by a local agency or school  
33 district because in that regard this act creates a new crime or  
34 infraction, eliminates a crime or infraction, or changes the penalty  
35 for a crime or infraction, within the meaning of Section 17556 of  
36 the Government Code, or changes the definition of a crime within  
37 the meaning of Section 6 of Article XIII B of the California  
38 Constitution.

39 However, notwithstanding Section 17610 of the Government  
40 Code, if the Commission on State Mandates determines that this

1 act contains other costs mandated by the state, reimbursement to  
2 local agencies and school districts for those costs shall be made  
3 pursuant to Part 7 (commencing with Section 17500) of Division  
4 4 of Title 2 of the Government Code. If the statewide cost of the  
5 claim for reimbursement does not exceed one million dollars  
6 (\$1,000,000), reimbursement shall be made from the State  
7 Mandates Claims Fund.

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